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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,536	11/07/2000	Sophie Brocheton	3882-906-CIP	9778

22442 7590 01/29/2004

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EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/707,536

Applicant(s)

BROCHETON ET AL.

Examiner

Curtis E. Sherrer, Esq.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08/22/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-12, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-12 and 14-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 and 8-12 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Again, the term "about" in claim 1 is a relative term that renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 8-12 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oeschle *et al.* (U.S. Pat. No. 5,484,620) ("Oeschle").

Oeschle teaches the production of a filter aid for the filtration of beverages, such as beer. The particles are produced by using fine-grained organic particles of a synthetic nature, such as,

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polyamides. (Col. 3, lines 2-10). The particles are sintered together to form an agglomeration and then reduced in size and sorted "within the desired granular size spectrum." (Col. 3, lines 15-21). The resultant product is useful as a filter aid, especially beverages and especially for alluvial and/or cake filtration. (Col. 4, lines 59-64) and col. 5, lines 32-35).

While the patent is silent as to the specifically claimed attributes, i.e., specific mass, shape factor, uniformity coefficient, Oeschle states that "filtering aids [] have multiple uses and that [they] have defined physical and/or chemical properties, i.e., are adapted to a respective particular application." (Col. 2, line 66 to col. 3 lines 2). Said claimed attributes are considered to be result effective variables that those in the art commonly optimize to obtain the desired filter aid. It would have been obvious to those of ordinary skill in the art to produce the filter aid of Oeschle with the claimed attributes because said attributes are commonly modified to obtain the desired results.

### ***Response to Arguments***

Applicants' arguments filed 08/22/03 have been fully considered but they are not persuasive.

Again, applicants argue that the term "about" is definite. They cite to case law that states that the scope of said term can be definite based on the precision or significance of the measurement used. A review of the specification does not disclose what the precision or significance of the measurements are so that the scope is still indefinite. The term "about" is a relative term, which renders the claim indefinite. Therefore, because applicants have provided no evidence that the specification defines the term, the claims are still held to be indefinite.

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With regards to the rejection based on obviousness, applicants again state that the prior art reference makes no mention of the claimed parameters, i.e., shape factor, uniformity coefficient, specific surface, etc. Again, as stated in the last Office action, said claimed attributes are considered to be result effective variables that those in the art commonly optimize to obtain the desired filter aid. Applicant teaches as much on page 6, where it is shown that shape factor is a ratio of the smallest diameter to the largest diameter of the particle (as disclosed in Trsferts et Phases Dispersees) and the specific surface is measured by the method taught by Lowell et al. (Powder surface area and porosity). These are well known physical characteristic measurements performed in the art.

Applicants have supplied the Hermia Declaration in order to demonstrate unexpected results. This Declaration supplies no further information than previously supplied in applicants' remarks. As previously stated, Table 2 is narrowly directed to the use of a nylon material (Rislan) and a polyamid 12 (Orgasol). The claims are not so narrowly written as to be directed to only these types of filter aids. Nor do the broad claims exclude some of the filter aids used in the comparison. At present the data found in Table 2 does not embody unexpected results for the claimed invention. The unexpected results must be commensurate in scope with claimed invention.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer'.

Curtis E. Sherrer, Esq.  
Primary Examiner